

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GINA M. ALONGI, as she is ADMINISTRATOR,
INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 4 HEALTH AND WELFARE,
PENSION, ANNUITY AND SAVINGS FUNDS,
LABOR-MANAGEMENT COOPERATION TRUST and
HOISTING AND PORTABLE ENGINEERS LOCAL 4
APPRENTICE AND TRAINING FUND,
Plaintiffs,

vs.

ATLAS BROKK, LLC and
ATLAS BROKK RENTALS, INC.,
Defendants.

C.A. No.

VERIFIED COMPLAINT ON A JUDGMENT

NATURE OF ACTION

1. This is an action to collect an unpaid judgment pursuant to a Default Judgment entered by this Court on November 24, 2008 against Defendant Atlas Brokk, LLC (“Brokk”). Plaintiffs’ original lawsuit established that Brokk failed to pay contributions, interest, damages, and costs totaling \$50,198.51 pursuant to a collective bargaining agreement and the mandates of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145. The Plaintiff Funds bring the instant suit to collect the outstanding judgment from Brokk.

JURISDICTION

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §§1132(a), (e) and (f), and §301 of the LMRA, as amended, 29 U.S.C. §185, without respect to the amount in controversy or the citizenship of the parties.

PARTIES

3. Plaintiff Gina M. Alongi is the Administrator of the International Union of Operating Engineers Local 4 Health and Welfare Fund. The International Union of Operating Engineers Local 4 Health and Welfare Fund is an “employee welfare benefit plan” within the meaning of §3(3) of ERISA, 29 U.S.C. §1002(3). It provides health, dental and prescription benefits and life insurance, accident insurance, and disability pay to participants. The Fund is administered at 16 Trotter Drive, Medway, Massachusetts, within this judicial district.

4. Plaintiff Gina M. Alongi is the Administrator of the International Union of Operating Engineers Local 4 Pension Fund. The International Union of Operating Engineers Local 4 Pension Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). It provides participants with a defined pension benefit. The Fund is administered at 16 Trotter Drive, Medway, Massachusetts, within this judicial district.

5. Plaintiff Gina M. Alongi is the Administrator of the International Union of Operating Engineers Local 4 Annuity and Savings Fund. This Fund provides participant-directed individual accounts including a 401(k). The International Union of Operating Engineers Local 4 Annuity and Savings Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 16 Trotter Drive, Medway, Massachusetts, within this judicial district.

6. Plaintiff Gina M. Alongi is the Administrator of the Hoisting and Portable Engineers Local 4 Apprenticeship and Training Fund. This Fund trains apprentices and journey workers on the construction industry. The Hoisting and Portable Engineers Local 4 Apprentice and Training Fund is an “employee welfare benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at One Engineers Way, Canton, Massachusetts, within this judicial district.

7. Plaintiff Gina M. Alongi is the Administrator of the Joint Labor-Management Cooperation Trust. This Trust is established pursuant to §302(c)(9) of the National Labor Relations Act, as amended, 29 U.S.C. §186(c)(9). The Trust is administered at 16 Trotter Drive, Medway, Massachusetts, within this judicial district.

8. The Health and Welfare, Pension, Annuity and Savings, and Apprenticeship and Training Funds are multi-employer plans within the meaning of §3(37) of ERISA, 29 U.S.C. §1002(37). They are hereinafter collectively referred to as “the Funds.”

9. Defendant Atlas Brokk, LLC (“Brokk”) is an involuntarily dissolved Massachusetts limited liability company, with a principal place of business of 10 West Whitehall Road, Amesbury, MA 01913. Its resident agent for service is Lisa LaPointe, at the same address. Brokk was at all relevant times an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12) and within the meaning of §301 of the LMRA, 29 U.S.C. §185.

10. Defendant Atlas Brokk Rentals, LLC (“Brokk Rentals”) is a Massachusetts corporation, with a principal place of business of 10 West Whitehall Road, Amesbury, MA 01913. Its resident agent for service is United States Corporation Agents at 101 Billerica Avenue, Building 5, Suite 204, North Billerica, MA 01862. Brokk Rentals is an employer

engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12) and within the meaning of §301 of the LMRA, 29 U.S.C. §185.

GENERAL ALLEGATIONS OF FACT

11. Plaintiff Funds filed a lawsuit against Brokk in this Court (**C.A. No. 08-10080 RWZ**), alleging unpaid contributions, interest, damages, and fees due pursuant to ERISA.

12. On November 24, 2008, this Court entered a Default Judgment against Brokk in the amount of \$50,198.51, plus post-judgment interest. True and accurate copies of the Default Judgment, as well as the First Writ of Execution issued by this Court on July 20, 2009, are attached hereto as Exhibit A. The Execution has not been satisfied to date.

13. On or about March 26, 2017, Brokk Rentals was incorporated.

14. Upon information and belief, the principals of Brokk and of Brokk Rentals are wife and husband, respectively.

15. The businesses have the same principal place of business.

16. The businesses both engage in the rental of construction equipment services as their primary purpose. True and accurate copies of the companies' Articles of Incorporation are attached hereto as Exhibit B.

17. Upon information and belief, the equipment being rented by Brokk Rentals remains in the name of Brokk. A search of the Secretary of the Commonwealth's website on December 4, 2018, at <http://corp.sec.state.ma.us>, demonstrated that Brokk Rentals does not have any UCC filings in its name, whereas the UCC filings for Brokk, regarding liens by Sovereign Bank on its equipment, were continued as recently as 2016. Copies of the relevant UCC filings are attached hereto as Exhibit C.

18. Upon information and belief, Brokk Rentals is a mere continuation of its predecessor, Brokk.

**COUNT I - VIOLATION OF ERISA -
DELINQUENT CONTRIBUTIONS – SUM CERTAIN**

19. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-18 supra.

20. The failure of Defendant Brokk to pay the judgment amount violates §515 of ERISA, 29 U.S.C. §1145.

21. Absent an order from this Court, the Defendant will continue to refuse to pay the monies it owes to the Funds, and the Funds and their participants will be irreparably damaged.

COUNT II – SUCCESSOR LIABILITY

22. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-21 supra.

23. Brokk Rentals serves as a mere continuation of Brokk and, as such, is joint and severally liable for the judgment amount under the doctrine of successor liability.

RELIEF REQUESTED

WHEREFORE, Plaintiff Funds requests this Court to grant the following relief:

- a. Order the attachment of the machinery, inventory, and accounts receivable of Brokk and/or Brokk Rentals;
- b. Enter a preliminary and permanent injunction enjoining Brokk from refusing or failing to pay the judgment amount;
- c. Enter judgment in favor of the Plaintiff Funds and against Brokk Rentals in the amount of \$50,198.51, along with any further amounts that may come due during the pendency of this action; and

- d. Such further and other relief as this Court deems appropriate.

Respectfully submitted,

GINA M. ALONGI, as she is ADMINISTRATOR,
INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 4 HEALTH AND
WELFARE, PENSION, ANNUITY AND
SAVINGS FUNDS, *et al.*,

By their attorney,

/s/Gregory A. Geiman

Gregory A. Geiman, Esq.

BBO #655207

I.U.O.E. Local 4 Trust Funds

16 Trotter Drive

Medway, MA 02053

(508) 533-1400 x140

ggeiman@local4funds.org

Dated: December 4, 2018

VERIFICATION

I, Gina M. Alongi, Administrator for the International Union of Operating Engineers Local 4 Trust Funds, verify that I have read the above Complaint, and the allegations set forth therein are true and accurate based on my personal knowledge, except for those allegations based on information and belief, and, as to those allegations, I believe them to be true.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 4th DAY OF
DECEMBER, 2018.

/s/Gina M. Alongi

Gina M. Alongi